



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA-2019-0074]

RIN 2130-AC78

Railroad Workplace Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to revise its regulations governing railroad workplace safety to: allow for the use of alternative security standards for electronic display systems used to view track authority information for roadway worker safety, and exempt certain drone roadway maintenance machines from existing environmental control requirements. These proposals would reduce regulatory burdens on the railroad industry while maintaining the existing level of safety.

DATES: Written comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments received after that date will be considered to the extent practicable.

FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, one will be scheduled and FRA will publish a supplemental notice in the *Federal Register* to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket No. FRA-2019-0074 may be submitted by any of the following methods:

- *Web Site:* Federal eRulemaking Portal, www.regulations.gov. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., W12-140, Washington, DC 20590.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to www.regulations.gov, including any personal information. Please see the Privacy Act heading in the Supplementary Information section of this document for information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov at any time.

FOR FURTHER INFORMATION CONTACT: Lance Hawks, Track Specialist, Office of Railroad Safety, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590, telephone: 678-633-7400, e-mail: Lance.Hawks@dot.gov; or Sam Gilbert, Attorney Adviser, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, telephone: 202-493-0270, e-mail: Samuel.Gilbert@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

To streamline and update existing rules, agencies periodically review and propose amendments to their regulations. Various statutes and Executive Orders also encourage or require such review with an emphasis on cost-savings. *See, e.g.,* 5 U.S.C. 610; Executive Order 13771, *Reducing Regulation and Controlling Regulatory Costs*, 82 FR 9339, Jan. 30, 2017.

Increasingly, the railroad industry has also petitioned FRA to amend its safety regulations to acknowledge and reflect technological innovations that improve

operational efficiencies. Within this context, FRA reviewed its 49 CFR part 214–Railroad Workplace Safety regulations. FRA identified potential amendments to subparts C and D of part 214 addressing Roadway Worker Protection and On-Track Roadway Maintenance Machines and Hi-Rail Vehicles, respectively, that would lead to operational efficiencies and cost-savings. FRA expects these amendments can be implemented without compromising safety. Accordingly, FRA is proposing to amend § 214.322 to allow the use of alternative security standards for electronic display systems to view track authority information, and amend § 214.505 to exempt certain drone roadway maintenance machines from environmental control requirements. FRA expects that these proposals would reduce regulatory burdens on the railroad industry without impacting safety.

FRA estimates that railroads would experience approximately \$5,900 in cost savings over the ten-year period of this analysis. The present value (PV)¹ of this cost savings, when discounted at 3- and 7-percent, is approximately \$5,000 and \$4,100, respectively. The annualized cost savings is estimated to be approximately \$590 at both discount rates. The table below presents the estimated 10-year total cost savings associated with the proposed rule.

Table I-1: Total 10-Year Cost Savings (2018 Dollars)

	Present Value 3%	Present Value 7%	Annualized 3%	Annualized 7%
Total Cost Savings	\$ 5,045	\$ 4,139	\$ 591	\$ 589

Because this proposed rulemaking provides railroads the flexibility to utilize an updated National Institute of Standards and Technology (NIST) standard for electronic display systems at their discretion, and codifies an existing waiver, FRA estimates that

¹ The present value of costs and cost savings flows are calculated in this analysis (over a 10-year period) because PV provides a way of converting future amounts into equivalent dollars today. The formula used to calculate these flows is: $1/(1+r)^t$, where “r” is the discount rate, and “t” is the year. Discount rates of 3 and 7 percent are used in this analysis.

there will be no costs associated with this proposed rulemaking.

II. Background and Overview of the Proposals

Exclusive Track Occupancy Track Authority Electronic Display Systems

When a roadway worker or work group establishes exclusive track occupancy working limits, and an electronic display device is used to view track authority information for that worker or work group, § 214.322(h) requires the device to meet the security standards of NIST Special Publication 800-63-2, Electronic Authentication Guideline, “Computer Security,” August 2013 (2013 Standard).²

Under § 214.322(h), new electronic display systems must provide Level 3 assurance as defined by the 2013 Standard, i.e., they must provide multi-factor remote network authentication (for example, a password or a biometric factor, such as a fingerprint, used in combination with a software or hardware token). FRA incorporated this 2013 Standard into part 214 based on the agency’s determination that the standard “provides technical guidelines for widely used methods of electronic authentication, and is reasonably available to all interested parties online . . . or by contacting NIST,” and that Level 3 assurance, specifically, “requires . . . stringent identity proofing and multi-factor authentication.” 81 FR 37840, 37869 (June 10, 2016).

Since adoption of § 214.322(h), NIST has updated its computer security standards several times in separate documents addressing the various components of identity assurance. *See, e.g.*, SP 800-63-3 (Digital Identity Guidelines) (last updated March 2, 2020); SP 800-63A (Enrollment & Identity Proofing) (last updated March 2, 2020); SP 800-63B (Authentication & Lifecycle Management) (last updated March 2, 2020); SP 800-63C (Federation & Assertions) (last updated March 2, 2020). Recognizing that computer security standards change, and that other standards may also provide multi-factor authentication, FRA is providing additional flexibility for meeting the electronic

² “Authentication” is the process through which the identity of an individual user, or “subject,” is validated.

authentication requirements of § 214.322(h). As discussed in more detail below, FRA is proposing a new paragraph (i), which provides that paragraph (h)'s requirements may be satisfied so long as an electronic display system uses multi-factor authentication.

Drone Waiver Incorporation

FRA may waive compliance with its regulations. *See* 49 U.S.C. § 20103(d) (“The Secretary [of Transportation] may waive compliance with any part of a regulation prescribed or order issued under this chapter if the waiver is in the public interest and consistent with railroad safety.”); *see also* 49 CFR 1.89(a). FRA implemented regulations to exercise this authority under subpart C to 49 CFR part 211, which provides a process and requirements for receiving and responding to waiver petitions. Each properly filed petition for a permanent or temporary waiver of a safety rule, regulation, or standard is referred to the FRA Railroad Safety Board (Board) for decision. *See* § 211.41(a). The Board’s decision is typically rendered after a notice is published in the *Federal Register* and an opportunity for public comment is provided. *See* § 211.41(b). If the Board grants a waiver petition, the Board may impose conditions on the grant of relief to ensure the decision is in the public interest and consistent with railroad safety. *See* § 211.41(c).

Activity under a waiver of regulatory compliance may generate sufficient data and experience to support an expansion of its scope, applicability, and duration. For instance, in many cases, FRA has expanded the scope of certain waivers or issued the same or similar waivers to additional applicants. FRA has also extended various waivers’ expiration dates. A waiver’s success and its continued expansion may warrant consideration of regulatory codification. Codifying a waiver, and thereby making its exemptions and requirements universally applicable, can result in industry cost-savings larger than from the waiver alone.

In this NPRM, FRA proposes to incorporate a longstanding waiver for certain

roadway maintenance machines (RMM) from the environmental control and protection system requirements currently found in subpart D of part 214. Part 214 defines an RMM as “a device powered by any means of energy other than hand power which is being used on or near railroad track for maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems.” Common types of RMMs include ballast regulators, tampers, mechanical brooms, rotary scarifiers, and undercutters. Each of these machines is typically operated by an individual occupying a cab mounted on the machine.

Existing § 214.505(a) requires certain types of new RMMs to be equipped with enclosed cabs with heating, air conditioning, and positive pressurized ventilation systems. In 2008, Harsco Track Technologies, a railroad equipment manufacturer, requested a waiver of § 214.505(a) for a newly developed RMM designed to function without a dedicated operator located on the machine (i.e., a drone machine). *See* Docket No. FRA-2008-0070 (available at www.regulations.gov). Harsco’s tamper machine (i.e., a machine used to pack or “tamp” ballast under railway tracks) was designed to be operated by a person in the cab of a separate, “leading” machine, such that the drone machine itself would not even be equipped with a cab. In support of its request for relief, Harsco explained that the leading machine in which the operator of the drone machine would sit would have a cab fully compliant with § 214.505(a).

By notice in the *Federal Register*, FRA invited public comment on Harsco’s waiver request. The Brotherhood of Maintenance of Way Employees Division (BMWED) expressed the view that the drone machine must be “devoid of any operator controls or other capabilities that would allow it to be operated from a position on, beside, or in proximity to,” the machine. FRA granted Harsco the requested relief from 214.505(a) for the operation of its drone tamper machine for an initial five-year period and conditioned the grant of relief on the following conditions:

- The drone machine could only be operated by someone located in the cab of a lead machine with a § 214.505–compliant cab and this restriction was required to be clearly identified by stenciling, marking, or other written notice in a conspicuous location on each drone machine.
- If, for maintenance and/or testing of the drone machine, the machine was operated outside of the main cab of the lead machine in a manner that would expose an employee to air contaminants, as outlined in Occupational Safety and Health Administration (OSHA) regulations defining exposure limits for various substances (29 CFR 1910.1000), the employee operating the machine was required to be protected in compliance with OSHA’s personal respiratory protection regulations (29 CFR 1910.134).
- Employees were prohibited from being on the machine during operation.
- The machine was not physically equipped with controls that would allow the equipment to be operated.
- Harsco maintained a list of the equipment subject to the waiver.

Since granting the initial waiver in 2008, at Harsco’s request, FRA has renewed the relief twice—in 2013 and 2018. Harsco supported each request for relief by noting that no injuries or safety issues had been reported and that “customers are pleased with the safety and performance of the drone tamper.” FRA has not independently received any reports of injuries related to the use of Harsco’s drone RMMs.

In 2018, FRA added the condition that Harsco provide each purchaser of the drone tamper with a copy of the approved waiver. FRA estimates that approximately 30 drone RMMs have been used under the waiver.

Given this safety record, FRA is proposing to amend subpart D of part 214 to allow the use of drone RMMs similar to Harsco’s drone tamping machine without the requirement for a waiver from FRA’s regulations.

III. Section-by-Section Analysis

FRA seeks comments on all proposals made in this NPRM.

Section 214.322 Exclusive Track Occupancy, Electronic Display.

Section 214.321(b) requires exclusive track occupancy authority to be transmitted to the roadway worker in charge by the train dispatcher or control operator in charge of the track, which may be done by data transmission. Many railroads use electronic devices to view these authorities, which must meet the requirements of § 214.322. Recognizing the importance of the integrity and secure transmission of this data, paragraph (h) of existing § 214.322 generally requires new electronic display systems used to view track authorities to meet NIST's 2013 authentication standard discussed above. Specifically, existing paragraph (h) requires new electronic display systems to provide Level 3 assurance as defined by the 2013 Standard (i.e., provide multi-factor remote network authentication), while electronic display systems implemented prior to July 1, 2017, must provide Level 2 assurance as defined by the 2013 Standard (i.e., single factor remote network authentication). Since FRA adopted this requirement, the 2013 Standard has been updated several times. To allow for the use of standards other than the 2013 Standard's Level 3 assurance that also provide multi-factor authentication, FRA proposes to add a new paragraph (i), which would provide that electronic display systems comply with paragraph (h) so long as they provide multi-factor authentication for digital authentication of the subject. Examples of multi-factor authentication include, but are not limited to, a password or biometric factor (e.g., fingerprint or voice pattern) used in combination with a one-time PIN sent to the subject's mobile phone. FRA does not intend this proposed revision to change the substance of paragraph (h)'s current requirement, or require that the authentication standards already in use for existing electronic display systems be changed. Instead, FRA intends this revision to allow

industry to adopt new and improved authentication technologies that also provide multi-factor authentication.

A railroad using an electronic display system with multi-factor authentication that employs a standard other than the 2013 Standard would not have to notify FRA of its choice or file any supporting documentation with FRA. However, in exercising its enforcement authority, FRA may request documentation or other evidence from a railroad using an alternative standard demonstrating that the standard provides multi-factor authentication to determine compliance with the requirement.

Section 214.505 Required Environmental Control and Protection Systems for New On-track Roadway Maintenance Machines with Enclosed Cabs.

As discussed above, technological developments since the promulgation of § 214.505 have led to the use of drone RMMs that do not possess operator controls, or a position on the machine for an operator to be located. The purpose of the cab on an RMM is to protect the operator from the harmful airborne contaminants produced by the work operations (e.g., silica ballast dust) and excessive noise produced by the machine itself. Such environmentally controlled cabs are expensive to install and maintain, but without an operator on the machine to protect, serve no purpose. Accordingly, as discussed in the *Background* section above, FRA proposes to incorporate into part 214 the longstanding waiver from the requirements of § 214.505 that allows for the use of drone RMMs. FRA is not aware of any safety issues or injuries resulting from the use of these drone machines operated under the conditions of the waiver.

Specifically, FRA proposes to add new paragraph (i) to existing § 214.505 to allow for the use of drone RMMs. The proposed requirements of new paragraph (i) are consistent with the conditions of the waiver discussed in the *Background* section above, which currently allows for the use of certain drone RMMs on a limited basis. Paragraph (i) would specify that existing paragraph (a) of § 214.505 (requiring certain RMMs to be

equipped with operational heating, air conditioning, and ventilation systems) does not apply to RMMs that are not capable of performing work functions other than by remote operation and are equipped with no operating controls. Instead, proposed new paragraph (i) would require that if a drone RMM is operated from the cab of a separate machine, that cab must be compliant with paragraph (a) of § 214.505, and if a drone RMM is operated outside of the cab of a separate machine in a way that will expose the operator to air contaminants, the operator must be protected in accordance with OSHA's regulations.

Further, proposed new paragraph (i) prohibits a person from being on a drone RMM while it is operating and requires drone RMMs to be clearly marked to indicate the potential hazards of the machine being operated from a distance or that the machine may move automatically. FRA is not prescribing a specific marking requirement, instead § 214.505(i) requires any marking to provide notice that roadway workers should stay clear of the equipment because it may move automatically, and that no person may be on the equipment while it is operating.

FRA requests comment on the proposed revisions to § 214.505 allowing for the use of drone RMMs.

IV. Regulatory Impact and Notices

Executive Order 12866, Executive Order 13771, and DOT Regulatory Policies and Procedures

This proposed rule is not a significant regulatory action within the meaning of Executive Order (EO) 12866, "Regulatory Planning and Review," and DOT's Administrative Rulemaking, Guidance, and Enforcement Procedures in 49 CFR part 5. This proposed rule is expected to result in a deregulatory action under EO 13771, "Reducing Regulation and Controlling Regulatory Costs."

FRA proposes to revise its regulations governing the minimum safety requirements for railroad workplace safety. The proposed changes amend part 214 to permit the use of alternative security standards for electronic display systems used to view track authority information in § 214.322, and, consistent with an existing waiver, exempt certain drone roadway maintenance machines from environmental control requirements in § 214.505(a), which include heating, air conditioning, and ventilation systems.

Costs

Electronic Display Systems

Section 214.322(h) requires that electronic display systems used to view track authority information meet the security standards defined by NIST Special Publication 800-63-2, Electronic Authentication Guideline, “Computer Security.” August 2013. FRA proposes to allow electronic display systems subject to § 214.322 to use alternative standards for electronic authentication, provided those systems require stringent identity proofing through multi-factor authentication. FRA expects no additional costs for this proposed requirement as it is simply adding flexibility.

Drone Waiver Incorporation

As discussed above, FRA approved Harsco’s 2008 waiver petition for a five-year period with conditions, and has since renewed waivers in 2013 and 2018. FRA expects no additional costs for this proposed requirement because FRA is codifying a long-standing waiver.

Cost Savings

The proposed rule would be beneficial for regulated entities seeking to use electronic display systems that meet alternative standards for electronic authentication and provide a comparable or better level of identity proofing and digital authentication as that required by the 2013 NIST Special Publication. The proposed rule would also

reduce the regulatory burden on regulated entities by providing relief from submitting waivers to FRA for the use of certain roadway maintenance machines.

FRA has estimated that cost savings of this proposed rule will result due to waiver codification, as the proposed rule would reduce the need for industry to submit waivers. These estimates assume that, without the proposed regulation, Harsco Track Technologies would continue submitting petitions for extending the waiver, which would occur every five years. The last renewal was approved in 2018. To date, Harsco has been the sole entity requesting this waiver from FRA, and FRA does not expect any other entities to apply for similar waivers over the period of analysis.

FRA assumes that the cost for Harsco to prepare and submit each waiver would be approximately the same as it is for FRA to process it. FRA seeks comments on this assumption. To estimate the cost savings associated with this waiver, FRA estimated the labor hours required for FRA to review and approve each waiver. Table IV-1 below displays the breakdown of the waiver review and submission cost for each waiver.

Table IV-1: Waiver Submission Costs

Title	Pay Grade	Wage Rate	Burdened Wage Rate (Wages x 1.75)	Hours	Total Wages
FRA Field Inspector	GS-12	\$47.82	\$83.69	8	\$669.48
Administrative Assistant (Field Office)	GS-12	\$47.82	\$83.69	4	\$334.74
Administrative Assistant (DC)	GS-9	\$30.54	\$53.45	4	\$213.78
Motive Power and Equipment Specialist (DC)	GS-14	\$62.23	\$108.90	16	\$1,742.44
			Total FRA Labor Cost per Renewal Waiver		\$2,960.44

For purposes of estimating waiver costs for this analysis, FRA estimates the associated renewals that would occur over the next 10 years. Table IV-2 shows the total cost savings for regulated entities to review and submit waivers to FRA.

Table IV-2: Industry Waiver Cost Savings

Analysis Year	Number of Waivers	Cost Savings (undiscounted)	Cost Savings (Discounted 3%)	Cost Savings (Discounted 7%)
1		\$ -	\$ -	\$ -
2		\$ -	\$ -	\$ -
3	1	\$ 2,960	\$ 2,709	\$ 2,416
4		\$ -	\$ -	\$ -
5		\$ -	\$ -	\$ -
6		\$ -	\$ -	\$ -
7		\$ -	\$ -	\$ -
8	1	\$ 2,960	\$ 2,337	\$ 1,723
9		\$ -	\$ -	\$ -
10		\$ -	\$ -	\$ -
Total		\$ 5,920	\$ 5,045	\$ 4,139

Alternatives

FRA is proposing this rulemaking to provide relief to regulated entities by allowing the use of alternative standards for electronic display systems to comply with § 214.322(h) and by not having to submit waivers to FRA. An alternative to this rulemaking would be to maintain the status quo.

If FRA does not modify § 214.322, entities would continue to use the NIST 2013 Special Publication as the standard for securing and transmitting data for electronic display systems. Although this standard is safe, FRA recognizes that updated NIST standards after the 2013 Special Publication could allow the industry to adopt newly developed technologies and methods of data transmission that are still compliant with § 214.322(h) while providing comparable, or better, levels of security.

In addition, absent this proposal, entities would be required to continue submitting waivers for the use of approved roadway maintenance machines and, therefore, would not receive the cost savings associated with not having to submit waivers. This would continue to be an unnecessary burden. FRA views the drone tamper machines as an example of using emerging modern technology to make railroad roadway maintenance safer and more efficient. FRA has verified that waivers allowing drone RMMs do not

negatively impact safety because FRA has not seen an adverse impact to safety while railroads have been operating under this waiver. This waiver has given industry some relief from unnecessary requirements and eased their burden. Therefore, issuing this proposed regulation provides cost savings from avoiding petitioning for and processing waivers.

Results

FRA has estimated the cost savings of this proposed rule. The cost savings of this proposed rule are displayed in the table below.

Table IV-3: Total 10-Year Cost Savings (2018 Dollars)

	Present Value 3%	Present Value 7%	Annualized 3%	Annualized 7%
Total Cost Savings	\$ 5,045	\$ 4,139	\$ 591	\$ 589

As noted in the table above, FRA estimates the total cost savings for this proposed rule to be approximately \$5,000 (PV, 3-percent) and \$4,100 (PV, 7-percent). The annualized cost savings is estimated to be approximately \$590 (PV, 3-percent) and \$590 (PV, 7-percent).

Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule directly affects all railroads, of which there are approximately 746 on the general system, and FRA estimates that approximately 93 percent of these railroads are small entities. Therefore, FRA has determined that this proposed rule will

have an impact on a substantial number of small entities.

However, FRA has determined that the impact on entities affected by the proposed rule will not be significant. The effect of the proposed rule will be to allow railroads the flexibility to choose the optimal electronic display equipment currently in the market, with the required level of security without having to notify or seek approval from FRA. Further, equipment manufacturers will no longer need to seek FRA approval to remove operator control stations to a remote piece of equipment, consistent with the established safety of a longstanding waiver. FRA expects the impact of the proposed rule will be a reduction in the paperwork burden for railroads and manufacturers, as well as future benefits from allowing continually advancing security standards to be incorporated without a regulatory change. FRA asserts that the economic impact of the reduction in paperwork, if any, will be minimal and entirely beneficial to small railroads.

Accordingly, the FRA Administrator hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. FRA invites comment from members of the public who believe there will be a significant impact on small railroads.

Paperwork Reduction Act

FRA is submitting the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.* The sections that contain the proposed and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section/Subject	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Total Annual Dollar Cost Equivalent ³
Form FRA F 6180.119 – Part 214 Railroad Workplace Safety Violation Report.	350 Safety Inspectors	129 forms	4 hours	516 hours	\$29,412
214.307 – Railroad on-track safety programs – RR programs that comply with this part + copies at system/division headquarters.	741 railroads	276 programs + 325 copies	2 hours + 2 minutes	563 hours	\$42,788
– RR notification to FRA not less than one month before on-track safety program takes effect.	741 railroads	276 notices	20 minutes	92 hours	\$6,992
– RR amended on-track safety programs after FRA disapproval.	741 railroads	1 program	4 hours	4 hours	\$304
– RR written response in support of disapproved program	741 railroads	1 written response	20 hours	20 hours	\$1,520
214.309 – RR publication of bulletins/notices reflecting changes in on-track safety manual.	60 railroads	100 bulletins/notices	60 minutes	100 hours	\$7,600
214.311 – RR written procedure to achieve prompt and equitable resolution of good faith employee challenges.	19 railroads	5 developed procedures	2 hours	10 hours	\$760
214.317 -- On-track safety procedures, generally, for snow removal, weed spray equipment, tunnel niche or clearing by.	19 railroads	5 operating procedures	2 hours	10 hours	\$760
214.318 – Procedures established by railroads for workers to perform duties incidental to those of inspecting, testing, servicing, or repairing rolling equipment.	741 railroads	19 rules/procedures	2 hours	38 hours	\$2,888
214.320 – Roadway maintenance machines movement over signalized non-controlled track – RR request to FRA for equivalent level of protection to that provided by limiting all train and locomotive movements to restricted speed.	741 railroads	5 requests	4 hours	20 hours	\$1,520
214.322 – Exclusive track occupancy, electronic display – Written authorities/printed authority copy if electronic display fails or malfunctions.	3 Class I Railroads	1,000 written authorities	10 minutes	167 hours	\$9,519
214.329 – Train approach warning – Written designation of watchmen/lookouts.	741 railroads	26,250 designations	30 seconds	219 hours	\$16,644
214.336 – Procedures for adjacent track movements over 25 mph: notifications/watchmen/ lookout warnings.	100 railroads	10,000 notices	5 seconds	14 hours	\$798
– Procedures for adjacent track movements 25 mph or less: notifications/watchmen/ lookout warnings.	100 railroads	3,000 notices	5 seconds	4 hours	\$228

³ Throughout the tables in this document, the dollar equivalent cost is derived from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75 percent overhead charges.

214.339 – Audible warning from trains: written procedures that prescribe effective requirements for audible warning by horn and/or bells for trains.	19 railroads	19 written procedures	4 hours	76 hours	\$5,776
214.343/345/347/349/351/353/355 – Annual training for all roadway workers (RWs) – Records of training.	50,000 roadway workers	50,000 records	2 minutes	1,667 hours	\$126,692
214.503 – Notifications for non-compliant roadway maintenance machines or unsafe condition.	50,000 roadway workers	125 notices	10 minutes	21 hours	\$1,197
– Resolution procedures.	19 railroads/contractors	5 procedures	2 hours	10 hours	\$760
214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.	741/200 railroads/contractors	500 lists	1 hour	500 hours	\$38,000
– Designations/additions to list.	692/200 railroads/contractors	150 additions/designations	5 minutes	13 hours	\$988
– Stenciling or marking of drone roadway maintenance machine (Revised requirement).	30 drones	10 stencils /displays	5 minutes	1 hour	\$57
214.507 – A-Built Light Weight on new roadway maintenance machines	692/200 railroads/contractors	1,000 stickers/stencils	5 minutes	83 hours	\$4,731
214.511 – Required audible warning devices for new on-track roadway maintenance machines.	692/200 railroads/contractors	3,700 identified mechanisms	5 minutes	308 hours	\$17,556
214.515 – Overhead covers for existing on-track roadway maintenance machines.	692/200 railroads/contractors	500 + 500 requests + responses	10 + 20 minutes	250 hours	\$17,423
214.517 – Retrofitting of existing on-track roadway maintenance machines manufactured on or after Jan. 1, 1991	692/200 railroads/contractors	500 stencils/displays	5 minutes	42 hours	\$2,394
214.523 – Hi-rail vehicles	692/200 railroads/contractors	5,000 records	5 minutes	417 hours	\$23,769
– Non-complying conditions.	692/200 railroads/contractors	500 tags + 500 reports	10 minutes + 15 minutes	208 hours	\$11,856
214.527 – Inspection for compliance – Repair schedules.	692/200 railroads/contractors	550 tags + 550 reports	5 minutes + 15 minutes	183 hours	\$10,431
214.533 – Schedule of repairs – Subject to availability of parts.	692/200 railroads/contractors	250 records	15 minutes	63 hours	\$4,788
Totals	741 railroads	105,751 responses	N/A	5,619 hours	\$388,151

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information.

Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the

functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Clearance Officer, at 202-493-0440.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Ms. Hodan Wells, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., 3rd Floor, Washington, D.C. 20590. Comments may also be submitted via e-mail to Ms. Wells at the following address: *Hodan.Wells@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the *Federal Register*. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the *Federal Register*.

Federalism Implications

Executive Order 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, agencies may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation.

This proposed rule has been analyzed consistent with the principles and criteria in Executive Order 13132. This proposed rule would not have a substantial effect on the States or their political subdivisions; it would not impose any substantial direct compliance costs; and it would not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this proposed rule could have preemptive effect under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (former FRSA), repealed and re-codified at 49 U.S.C. 20106, and the former Locomotive Boiler Inspection Act (LIA) at 45 U.S.C. 22–34, repealed and re-codified at 49 U.S.C. 20701–03. The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of

Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the “local safety or security hazard” exception to section 20106. Moreover, the U.S. Supreme Court has held the former LIA preempts the field concerning locomotive safety. *See Napier v. Atl. Coast Line R.R.*, 272 U.S. 605 (1926) and *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625 (2012). Therefore, if this proposed rule is finalized, it is possible States would be preempted from addressing the subjects covered by the proposed rule (security standards for electronic display systems used to display track authority information and environmental controls in drone machines).

Environmental Impact

FRA has evaluated this proposed rule consistent with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321, *et seq.*), the Council of Environmental Quality’s NEPA implementing regulations at 40 CFR parts 1500–1508, and FRA’s NEPA implementing regulations at 23 CFR part 771, and determined that it is categorically excluded from environmental review and does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency’s NEPA implementing regulations that do not normally have a significant impact on the environment and, therefore, do not require either an EA or EIS. *See* 40 CFR 1508.4. Specifically, FRA has determined that this proposed rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), “[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.”

This proposed rule does not directly or indirectly impact any environmental resources and will not result in significantly increased emissions of air or water pollutants

or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review. *See* 23 CFR 771.116(b). FRA has concluded that no such unusual circumstances exist with respect to this proposed regulation and the proposal meets the requirements for categorical exclusion under 23 CFR 771.116(c)(15).

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to effect historic properties. *See* 16 U.S.C. 470. FRA has also determined that this rulemaking does not approve a project resulting in use of a resource protected by Section 4(f). *See* Department of Transportation Act of 1966, as amended (Pub. L. 89-670, 80 Stat. 931); 49 U.S.C. 303.

Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act, 2 U.S.C. 1532, further requires that before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. The proposed rule would not result in the expenditure, in the aggregate, of \$100,000,000 or more in any one year (adjusted annually for inflation), and thus preparation of such a statement is not required.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov*, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through *www.dot.gov/privacy*. To facilitate comment tracking and response, FRA encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

List of Subjects in 49 CFR Part 214

Railroad Workplace Safety.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 214 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 214—RAILROAD WORKPLACE SAFETY

1. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20107, 21301-21302, 21304, 28 U.S.C. 2461, note; and 49 CFR 1.89.

2. In § 214.322, add paragraph (i) to read as follows:

§ 214.322 Exclusive track occupancy, electronic display.

* * * * *

(i) For purposes of complying with paragraph (h) of this section, electronic display systems may use multi-factor authentication for digital authentication of the subject.

3. Amend § 214.505 by revising the introductory text of paragraph (a) and by

adding paragraph (i) to read as follows:

§ 214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.

(a) With the exception of machines subject to paragraph (i) of this section, the following new on-track roadway maintenance machines shall be equipped with operative heating systems, operative air conditioning systems, and operative positive pressurized ventilation systems:

* * * * *

(i) Paragraph (a) of this section is not applicable to machines that are incapable of performing work functions other than by remote operation and are equipped with no operating controls (i.e., drone roadway maintenance machines) if the following conditions are met.

(1) If a drone roadway maintenance machine is operated from the cab of a separate machine, that separate machine must comply with paragraph (a) of this section.

(2) If a drone roadway maintenance machine is operated outside of the main cab of the separate machine in a manner that will expose the operator to air contaminants, as outlined in 29 CFR 1910.1000, Air contaminants, the employee shall be protected in compliance with 29 CFR 1910.134, Personal respiratory protection.

(3) No person is permitted on the drone roadway maintenance machine while the equipment is operating.

(4) Each drone roadway maintenance machine must be clearly identified by stenciling, marking, or other written notice in a conspicuous location on the machine indicating the potential hazards of the machine being operated from a distance or that the machine may move automatically.

Issued in Washington, DC.

Quintin C. Kendall,

Deputy Administrator.

[FR Doc. 2020-27096 Filed: 12/10/2020 8:45 am; Publication Date: 12/11/2020]